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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-363

No. COA21-492

Filed 17 May 2022

Nash County, No. 21 CVS 131

THEODORE PITTMAN, Plaintiff,

v.

RICKY MCCRAE WILKINS, ROOSEVELT T. WILKINS, JR., MARJORIE WILKINS, MARY WILKINS-FOX, SAMUEL M. WILINS, AND VERONICA SMITH, Defendants.

Appeal by plaintiff from order entered 26 April 2021 by Judge Quentin T. Sumner in Nash County Superior Court. Heard in the Court of Appeals 9 February 2022.

Linck Harris Law Group, PLLC, by David H. Harris, Jr., for plaintiff.

Battle, Winslow, Scott & Wiley, P.A. by M. Greg Crumpler; Narron & Holford, P.A., by C. David Williams; and Thomas W. King, for defendants.

DIETZ, Judge.

¶ 1 Plaintiff Theodore Pittman appeals from the trial court's order dismissing his declaratory judgment action in connection with the administration of his daughter's estate. Plaintiff sought a declaration concerning the validity an alleged holographic will not yet offered for probate, his status as an heir, the appointment of the administrator, and the proper accounting for the estate.

¶ 2 As explained below, Plaintiff's claims are all part of the administration of the estate and thus within the exclusive original jurisdiction of the clerk of superior court. We therefore affirm the trial court's order dismissing the declaratory judgment action for lack of jurisdiction.

Facts and Procedural History

¶ 3 Marcia Ann Wilkins Draughn passed away in September 2018. Plaintiff Theodore Pittman is Draughn's biological father. Draughn died without a surviving mother, spouse, children, or siblings. Defendants are Draughn's maternal uncles, aunts, and niece.

¶ 4 In November 2018, Plaintiff visited the clerk of superior court to ascertain what he needed to do to probate Draughn's estate. During this trip, Plaintiff discovered that Defendants filed affidavits for probate of an alleged holographic will.

¶ 5 In February 2019, the clerk of superior court issued letters of administration appointing Defendant Ricky McCrae Wilkins, Draughn's uncle, as the administrator of Draughn's estate. The alleged holographic will has not yet been offered for probate in this estate proceeding and, based on the record on appeal, administration of the estate is proceeding through the laws of intestate succession.

¶ 6 In May 2019, Plaintiff petitioned the clerk of superior court for various relief in the estate proceeding, including a request that Plaintiff be declared the sole

beneficiary of the estate, that Wilkins be removed as the administrator, and that a new impartial administrator conduct a full accounting of the estate.

¶ 7 Wilkins responded to the petition by asserting that Pittman willfully abandoned Draughn when she was a minor and was not entitled to inherit under N.C. Gen. Stat. §31A-2.

¶ 8 In February 2021, Plaintiff voluntary dismissed his petition before the clerk of superior court without prejudice and brought a declaratory judgment action in superior court. Pittman sought five declarations from the superior court: (1) that the alleged holographic will at issue was "not legally binding"; (2) that Plaintiff is Draughn's sole heir; (3) that Wilkins was disqualified from serving as administrator of Draughn's estate; (4) that a public administrator must be appointed for Draughn's estate; and (5) that the new administrator must conduct an accounting of the assets of Draughn's estate. Plaintiff also sought monetary and injunctive relief based on these declaratory claims.

¶ 9 Defendants moved to dismiss on the grounds that Plaintiff's claims are all part of the administration of the estate and thus within the exclusive jurisdiction of the clerk of superior court. After a hearing, the trial court entered an order granting Defendants' motion to dismiss. Plaintiff timely appealed.

Analysis

¶ 10 Pittman argues that the trial court erred in granting Defendants' motion to dismiss pursuant because he had the "absolute right to seek declaratory judgment before the superior court to determine his rights to inherit from his daughter's Estate."

¶ 11 The Declaratory Judgment Act permits trial courts to enter declaratory judgments, but only on issues that are within the court's jurisdiction. *Swint v. Doe*, 265 N.C. App. 104, 107, 827 S.E.2d 309, 311 (2019). This Court's "case law reveals a clear division between estate-related issues," which may be brought through a declaratory judgment action in superior court, and claims "which are part of the standard administration of an estate and therefore outside the superior court's subject matter jurisdiction." *Livesay v. Carolina First Bank*, 200 N.C. App. 306, 309–10, 683 S.E.2d 453, 456 (2009).

¶ 12 This Court delineates between these two categories by permitting declaratory relief on issues that "arise from" the estate but are beyond the "standard administration of the estate." *Id.* By contrast, matters that are "a part of" the administration of an estate "are considered probate matters in which the clerk of superior court has exclusive original jurisdiction." *Id.*

¶ 13 So, for example, "claims of misrepresentation, undue influence and inadequate disclosure of assets or liabilities arise from, but are not part of, the administration of

an estate and are properly determined by the superior court." *Id.* So too are claims for "breach of fiduciary duty, negligence and fraud." *Id.* But claims "seeking an accounting and distribution from an estate, appointment of a new trustee, and return of compensation received from an estate are a part of the administration, settlement and distribution of estates of decedents, original jurisdiction over which should properly be initially exercised by the clerk." *Id.* (quotation marks omitted).

¶ 14 Here, Plaintiff seeks a declaration concerning the validity of an alleged holographic will not yet offered for probate, his status as an heir, a declaration disqualifying the current administrator and appointing a public administrator, and an accounting of the estate. These are all matters that our case law holds are a part of the estate proceeding before the clerk of superior court and not proper subjects for declaratory relief in a collateral, declaratory judgment proceeding in superior court. *See In re Estate of Mills*, 236 N.C. App. 247, 765 S.E.2d 122 (2014) (clerk of superior court hears claims concerning probate of wills); *In re Estate of Lunsford*, 359 N.C. 382, 384, 610 S.E.2d 366, 368 (2005) (clerk of superior court hears claims concerning willful abandonment by putative heir); *Livesay*, 200 N.C. App. at 309–10, 683 S.E.2d at 456 (clerk of superior court hears claims concerning appointment and removal of administrator and accounting of estate assets).

¶ 15 Plaintiff also seeks monetary damages and injunctive relief in his complaint, but those claims are based on the requests for declaratory relief. Plaintiff did not

assert claims for breach of fiduciary duty, negligence, or fraud, and did not move to transfer the estate proceeding to superior court under the statutory process that permits this type of transfer to join an estate proceeding with other claims outside the clerk's jurisdiction. *See* N.C. Gen. Stat. § 28A-2-4. Accordingly, the trial court properly granted Defendants' motion to dismiss because all of Plaintiff's claims are matters within the exclusive original jurisdiction of the clerk of superior court.

Conclusion

¶ 16 We affirm the trial court's order.

AFFIRMED.

Judges MURPHY and JACKSON concur.